

**United States Department of Labor
Employees' Compensation Appeals Board**

C.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Garland, TX, Employer**

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**Docket No. 16-0916
Issued: June 28, 2017**

Appearances:

Debra Hauser, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 22, 2016 appellant, through counsel, filed a timely appeal from a September 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's September 30, 2015 decision was March 28, 2016. Since using April 1, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 22, 2016, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant forfeited his compensation for the period May 13, 2014 through March 15, 2015, thus creating an overpayment of compensation in the amount of \$37,151.04, for which he was deemed at fault.

FACTUAL HISTORY

On March 11, 2014 appellant, then a 47-year-old city carrier, filed an occupational disease claim (Form CA-2) for alleged injuries to his shoulders, hands/wrists, hips, and feet. On May 7, 2014 OWCP initially accepted his claim for bilateral affections of the shoulder region, right pelvis stress fracture, bilateral plantar fibromatosis, and bilateral calcaneal spur. It later expanded the claim to include bilateral carpal tunnel syndrome, bilateral hip region enthesopathy, and unspecified backache.

In June 2014, appellant submitted claims for compensation (Form CA-7) for lost wages covering the periods May 13 through 30, 2014, May 31 through June 12, 2014, and June 16 through 27, 2014. On each Form CA-7 appellant responded “No” to the question, “Have you worked outside your federal job for the period(s) claimed in Section 2?”⁴

In CA-7 forms filed on June 18 and 30, 2014, appellant claimed disability from May 31 to June 12 and June 16 to 27, 2014, respectively, due to his accepted work injuries. The forms contained the same language as the form he filed on May 30, 2014. Appellant again responded “No” on the June 18 and 30, 2014 forms in response to the question, “Have you worked outside your federal job for the period(s) claimed in Section 2?”

OWCP paid wage-loss compensation for the claimed periods and placed appellant on the periodic rolls as of June 29, 2014.⁵

On a Form EN1032 completed on December 24, 2014, appellant checked a box marked “Yes” indicating that he had not worked for any employer during the past 15 months, noting that he worked as a city carrier for the employing establishment until May 13, 2014 at a rate of pay of \$27.74 per hour. He also checked a box marked “Yes” indicating that he was self-employed or involved in any business enterprise in the past 15 months, noting “Up to March 2014” in the place for “Dates of self-employment or involvement in business enterprise.” Appellant noted “Cooking for catering” as the “Description of work or business involvement” and listed the rate of pay as \$400.00 per month.⁶

⁴ Section 3 of the Form CA-7 notes, “You must report all earnings from employment (outside your federal job): include any employment for which you received a salary, wages, income, sales commissions, piecework, or payment of any kind during the period(s) claimed in Section 2. Include self-employment, involvement in business enterprises, as well as service with the military forces. Fraudulent concealment of employment or failure to report income may result in forfeiture of compensation benefits and/or criminal prosecution.”

⁵ Appellant continued to receive wage-loss compensation through March 15, 2015.

⁶ Appellant also indicated that he performed volunteer work in the form of “Overtime at Post Office” up until May 13, 2014.

The Form EN1032 instructed appellant to report all employment for which he received a salary, wages, income, sales commissions, piecework, or payment of any kind. He was directed to report all self-employment or involvement in business enterprises, including (but not limited to) farming, sales work, operating a business, and providing services in exchange for money, goods, or other services. The kinds of services that appellant was required to report included such activities as carpentry, mechanical work, painting, contracting, child care, keeping books and records, odd jobs, and managing and/or overseeing a business of any kind, including a family business. Such activities had to be reported even if they were part time or intermittent.

The Form EN1032 also instructed appellant to report any work or ownership interest in any business enterprise, even if the business lost money or if profits or income were reinvested or paid to others. If he performed any duties in a business enterprise for which he was not paid, he had to show as the rate of pay what it would have cost the employer or organization to hire someone to perform the work or duties he did, even if the work was for him or a family member or relative. The form contained a certification clause which informed appellant of the consequences of not accurately reporting his employment activities, such as being subjected to criminal penalties and losing the right to receive workers' compensation.

In a March 10, 2015 letter, OWCP again requested that appellant complete an attached Form EN1032, which contained language advising him what types of employment activities and earnings that he was required to report. Appellant did not complete and return the March 2015 Form EN1032.

Effective March 16, 2015, appellant returned to full-duty work without restrictions. He promptly advised OWCP of his return to work, and it terminated his wage-loss compensation.

In a report dated April 14, 2015, a special agent for the Office of Inspector General (OIG) for the employing establishment described the results of an investigation of appellant's activities. He indicated that appellant was interviewed on April 8, 2015 at which time he revealed that he had not disclosed working with his catering business, MBK BBQ, LLC, and his motorcycle customizing business, MBK Customs, because they did not make a profit for the time period he was receiving workers' compensation. The special agent noted that appellant reported to him that, around this period, he had limited dealings with the catering business in that he was only responsible for moving the catering trailer to events and that he did not take on any new motorcycle customizing jobs while he was receiving workers' compensation. The OIG received information from the employing establishment that appellant was observed on June 5, 2014 catering a motorcycle rally at High Five Cycles in Dallas, Texas. The special agent noted that he was at High Five Cycles from 7:20 to 10:00 p.m. on July 24, 2014 and observed a catering trailer with a sign denoting "My Brother's Keeper Catering," a business he later identified as being owned and operated by appellant and his wife. He reported that he saw appellant walking around the event handing out Dunlop 2014 Tire Rebate Coupons and that a business card for his motorcycle customizing business was displayed on a motorcycle.

In his April 14, 2015 report, the special agent further indicated that, from 6:15 to 8:05 p.m. on August 7, 2014, he observed appellant during a "Bike Night" event at High Five Cycles. He saw appellant driving a truck, pulling a catering trailer, and assisting with the setup of the trailer for the event. The special agent purchased barbeque from the catering trailer and paid with a debit card which appellant's wife scanned on a card reader attached to her phone. During

a “Bike Night” at High Five Cycles on August 14, 2014, appellant told the special agent that he had a catering business and a motorcycle customizing business and provided a business card.⁷ On the evening of December 12, 2014, he observed appellant “working the front door” of an event at the Music Factory with his motorcycle “on display.” The special agent indicated that, from 6:29 to 8:30 p.m. on March 26, 2015, he saw appellant at High Five Cycles setting up a catering trailer and generator, and working on a motorcycle. From 6:58 to 8:40 p.m. on April 2, 2015, he observed appellant at High Five Cycles setting up a catering trailer and telling another person that he customized motorcycles and that the catering trailer was his.

On April 8, 2015 another special agent from the OIG interviewed appellant who acknowledged that he had a catering business and a motorcycle customizing business and that he catered the “Bike Night” at High Five Cycles every Thursday night, weather permitting, in order to promote these businesses. Appellant indicated that he hired his son and a friend to conduct the work at the catering events that he was unable to perform due to his injuries and that he either broke even or lost money on each event. The special agent reported that appellant claimed that, when he was at High Five Cycles on December 12, 2014, he had cooked barbeque for his motorcycle club for free. Appellant acknowledged that he had not disclosed his business or earnings on the CA-7 forms he completed on May 30 and June 18 and 30, 2014 and the Form EN1032 he completed on December 24, 2014 because his businesses did not make a profit. The special agent indicated that appellant explained that customer payments from the catering business were deposited into a bank account and that monies were withdrawn from the account to pay employees and purchase food supplies.

In an April 8, 2015 handwritten statement, appellant acknowledged that, when he filled out a Form CA-7 for dates he was off work, he did not correctly fill out Section 3 which provides an individual must report all earnings. He indicated that he “accidentally did not understand” and thought the form was asking for profits made through a company. Appellant noted that he paid his son and another person to “work the trailer” and that whatever profits were made went to these two or to pay for supplies and food.⁸ He advised that he “did not profit with the business because it was very little” and that he either lost money or broke even during the entire period covered by the Form EN1032 he completed on December 24, 2014. Appellant noted that, with respect to the Form EN1032, he did write that he had a business, but that he did not make any money in any of his business ventures. He thought that “moneys profited” was what had to be reported on the Form EN1032 and noted that he was making approximately \$400.00 per month up until March 2014.

In his April 8, 2015 handwritten statement, appellant further indicated that he was “sorry for not reading into [the Form EN1032] thoroughly” and advised that he had to deposit money into his business bank account to prevent an overdraft. He indicated that he made approximately \$75.00 to \$100.00 on any catering events he was able to work and noted that he did not perform “any kind of work” or do anything outside of his work restrictions when he was at the catering

⁷ On November 24, 2014 the special agent conducted an internet search which revealed that appellant’s catering business was advertised on a social media site for High Five Cycles and listed his personal telephone number as a contact.

⁸ In another portion of his statement, appellant indicated that he paid two sons, a daughter, and another person who worked for him.

events. Appellant indicated that he had not made any money on his motorcycle business since being off work. He noted that, with respect to an anniversary party for his motorcycle club in December 2014, he did not make any money on the event and did not stand at the front door of the event for longer than he was capable.⁹

Documents retrieved by an OIG special agent from the website for the Texas Secretary of State revealed that appellant and his wife were managing directors of MBK BBQ, LLC and that appellant filed for the business on May 12, 2011. The special agent asked appellant to provide statements for bank accounts used in connection with his catering and motorcycle customizing businesses. In response, appellant provided bank account statements for the catering business, MBK BBQ, LLC, which showed deposits totaling \$5,453.57 during the period May 13 through December 24, 2014.

In an August 11, 2015 decision, OWCP determined that appellant forfeited his right to compensation from May 13, 2014 to March 15, 2015 because he knowingly failed to report employment and earnings during this period on CA-7 forms and a Form EN1032. It indicated that an OIG investigation showed that appellant worked as a caterer and motorcycle customizer during this period and found that the wording of the Form EN1032 advised appellant of the need to report such employment activity. OWCP indicated that appellant reported on a December 24, 2014 Form EN1032 that he only worked up to March 2014, but that the evidence of record showed that he had unreported employment thereafter.

In an August 11, 2015 letter, OWCP advised appellant of its preliminary determination of an overpayment of compensation in the amount of \$37,151.04 due to the fact that he forfeited his compensation from May 13, 2014 to March 15, 2015.¹⁰ It also made a preliminary determination that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP indicated that the three CA-7 forms and one Form EN1032 appellant completed clearly advised him of the type of employment activities and earnings that needed to be reported. It advised him that he could submit evidence challenging the fact, amount, or finding of fault, and request waiver of the overpayment. OWCP informed appellant that he could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. It requested that he complete and return an enclosed Overpayment Recovery Questionnaire (Form OWCP-20) within 30 days even if he was not requesting waiver of the overpayment. Appellant did not complete and return the Overpayment Recovery Questionnaire (Form OWCP-20) within the allotted period as requested by OWCP.

In an April 4, 2016 statement, appellant continued to argue that he did not work or have earnings during the period of the forfeiture and overpayment of compensation, May 13, 2014 to March 15, 2015. He acknowledged that he drove the catering trailer to motorcycle club events and “helped hookup the trailer,” but denied that he was involved in the cooking required by the business or otherwise worked inside the trailer. Appellant indicated that his two businesses

⁹ In an April 9, 2015 handwritten statement, appellant again emphasized that he did not earn a profit from his businesses while he was receiving workers’ compensation.

¹⁰ The record contains payment records and worksheets showing that appellant received \$37,151.04 in compensation from May 13, 2014 to March 15, 2015.

made “little or no profit” during this period and that he did not personally receive any monies from them. In several undated statements, his wife, son, and a family friend indicated that appellant did not play any substantial role in the catering business. These individuals indicated that he only hauled the catering trailer to various events.

In a September 30, 2015 decision, OWCP found an overpayment of compensation in the amount of \$37,151.04 due to the forfeiture of appellant’s right to compensation for the period May 13, 2014 to March 15, 2015. It also determined that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP indicated that appellant made an incorrect statement as to a material fact which he knew or should have known to be incorrect when he knowingly omitted his involvement in business enterprises and self-employment on CA-7 forms and a Form EN1032.¹¹

LEGAL PRECEDENT

A partially disabled employee may be required to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times specified by OWCP.¹² Earnings from employment or self-employment means: (1) gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or (2) a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration.¹³ Neither lack of profits nor the characterization of the duties as a hobby removes an unremunerated individual’s responsibility to report the estimated cost to have someone else perform his duties.¹⁴

If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required.¹⁵ In OWCP’s regulations, “knowingly” is defined as: “with knowledge, consciously, willfully or intentionally.”¹⁶ A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.¹⁷ Forfeiture results in an overpayment of compensation for the period of the forfeiture and is subject to recovery under 5 U.S.C. § 8129.¹⁸

¹¹ See *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

¹² 5 U.S.C. § 8106(b); 20 C.F.R. § 10.525 (2008).

¹³ 20 C.F.R. § 10.5(g).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8106(b); 20 C.F.R. § 10.529(a). *Knowingly* means with knowledge, consciously, willfully or intentionally. 20 C.F.R. § 10.5(n).

¹⁶ 20 C.F.R. § 10.5(n); see *Anthony A. Nobile*, 44 ECAB 268 (1992).

¹⁷ 20 C.F.R. § 10.529(a).

¹⁸ 5 U.S.C. § 8106(b); 20 C.F.R. § 10.529(b).

An individual who is found at fault in either accepting or creating an overpayment is not eligible for a waiver of recovery of overpayment.¹⁹ A benefits recipient will be found at fault if the individual: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect.²⁰

ANALYSIS

The Board finds that OWCP properly found that appellant forfeited his right to compensation for the period May 13 through December 24, 2014.

The evidence of record establishes that appellant had employment activity and/or earnings during the period of the forfeiture, May 13 to December 24, 2014. The evidence reveals that he had two businesses, a catering business, MBK BBQ, LLC, and a motorcycle customizing business, MBK Customs.²¹ The Board finds that there is no clear evidence that appellant had employment activity related to the motorcycle customizing business during the period in question, but that there is substantial evidence that he had employment activity related to the catering business for the period at issue. In his various statements, appellant acknowledged that, during the period May 13 to December 24, 2014, he used his vehicle to pull the catering trailer to various motorcycle events where barbeque was sold. He asserted that his role was very limited and that family members (his wife, daughter, and two sons) and a family friend performed the actual duties of the catering business such as selling the barbeque from the trailer.

On appeal, counsel cited Board precedent noting that engagement in employment activity would not be found where a claimant was merely a passive investor in a family business. However, citation to these cases is inapposite as appellant's involvement in the catering business went beyond passive investment. Appellant's characterization of his limited involvement in the business is contradicted by the testimony of OIG agents who frequented numerous events where appellant was present between July 24, 2014 and April 2, 2015.²² These investigators observed that appellant often pulled a catering trailer to the events with his vehicle, assisted with the setup of the trailer for the events, set up generators for the trailer, worked the door of the events, and walked around the events promoting his businesses. Appellant indicated that his catering business either made very little profit, broke even, or lost money during the period of the forfeiture. He noted that any profits went to buy supplies and to pay his family members and a friend to work the catering trailer. Regardless of whether appellant actually realized any profit, it is clear that the catering business had earnings during the period in question. He provided bank

¹⁹ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433(a), 10.434.

²⁰ 20 C.F.R. § 10.433(a).

²¹ Documents retrieved by an OIG special agent from the website for the Texas Secretary of State reveal that appellant and his wife were managing directors of MBK BBQ, LLC and that appellant filed for the business on May 12, 2011.

²² See *Gregg B. Manston*, 45 ECAB 344 (1994) (finding that the claimant's involvement in property management went beyond mere passive investment in property).

account statements for the catering business which showed that he deposited \$5,453.57 into this account between May 13 and December 24, 2014.²³

The Board notes that the evidence of record supports OWCP's determination that appellant forfeited his right to compensation for the period May 13 through December 24, 2014. In the present case, the record establishes that he knowingly omitted employment activities and earnings on the Form EN1032 he completed on December 24, 2014.²⁴ Through the wording of this form, OWCP notified appellant of his responsibility to complete the form and provide relevant information concerning his employment status and earnings during the periods covered by the form. In the Form EN1032 completed on December 24, 2014, appellant checked a box marked "Yes" to indicate that he worked for an employer during the past 15 months, noting that he worked as a city carrier for the employing establishment until May 13, 2014 at a rate of pay of \$27.74 per hour. He also checked a box marked "Yes" to indicate that he was self-employed or involved in any business enterprise in the past 15 months, noting "Up to March 2014" in the place for "Dates of self-employment or involvement in business enterprise." Appellant noted "Cooking for catering" as the "Description of work or business involvement" and listed the rate of pay as \$400.00 per month.

For the reasons noted above, appellant had employment activity and/or earnings during the period of the forfeiture which were not reported on the Form EN1032 he completed on December 24, 2014, *i.e.*, the catering business activities in which he was involved after March 2014. The evidence of record establishes that he knowingly omitted such employment activity/earnings on the form given the detailed nature of the instructions for completing the form. On appeal, counsel argues that appellant did not understand that he had to report his self-employment business activities because they were too limited in nature or because he felt that the catering business did not make a notable profit. However, the Form EN1032 signed by appellant on December 24, 2014 used such terms as "business," "enterprise," and "service" to explain the obligation for reporting all forms of employment, self-employment and earnings.²⁵ The explicit language of the Form EN1032 clearly advised him that the nature of his work in his catering business would require him to report such employment activities on the form. The Form EN1032 also instructed appellant to report any work or ownership interest in any business enterprise, even if the business lost money or if profits or income were reinvested or paid to others. If he performed any duties in a business enterprise for which he was not paid, he had to show as the rate of pay what it would have cost the employer or organization to hire someone to perform the work or duties he did, even if the work was for him or a family member or relative.²⁶ The form contained a certification clause which informed appellant of the consequences of not

²³ Appellant acknowledged that he took monies out of this account to cover expenses.

²⁴ See *supra* notes 16 and 17 regarding the meaning of knowingly in this context.

²⁵ The Form EN1032 instructed appellant to report all employment for which he received a salary, wages, income, sales commissions, piecework, or payment of any kind. Appellant was directed to report all self-employment or involvement in business enterprises, including (but not limited to) operating a business, and providing services in exchange for money, goods or other services. The kinds of services that appellant was required to report included such activities as carpentry, mechanical work, painting, contracting, keeping books and records, odd jobs, and managing and overseeing a business of any kind, including a family business.

²⁶ Under 20 C.F.R. § 10.5(g), lack of profits would not remove appellant's responsibility to report the estimated cost to have someone else perform his duties.

accurately reporting his employment activities, such as being subjected to criminal penalties and losing the right to receive workers' compensation. Appellant's signing of strongly-worded certification clauses on the Form EN1032 he completed on December 24, 2014 further establishes that he was aware of the materiality of his failure to report his employment.²⁷

Based upon these findings, the Board concludes that appellant "knowingly" omitted his earnings under section 8106(b)(2) of FECA by failing to report his employment activities and earnings for the period May 13 to December 24, 2014, *i.e.*, the portion of the forfeiture period covered by the Form EN1032 signed on December 24, 2014. Accordingly, the Board finds that OWCP properly determined that appellant forfeited his right to compensation for the period May 13 to December 24, 2014.

The Board further finds that there is no form or document in the record on which appellant knowingly failed to report employment activities or earnings for the remaining period of the forfeiture, *i.e.*, December 25, 2014 to March 15, 2015. Without such a form or document, the period of forfeiture must be limited to the period in which it is established that he actually worked and did not report earnings.²⁸ In such a circumstance, OWCP must match the actual unreported earnings with a corresponding period of compensation received.²⁹ To date, it has not undertaken this type of analysis with respect to the above-noted period not covered by the Form EN1032 appellant completed on December 24, 2014. Accordingly, OWCP's finding with respect to forfeiture and overpayment for the period December 25, 2014 to March 15, 2015 is set aside.

As noted, OWCP properly determined that appellant forfeited his right to compensation for the period May 13 to December 24, 2014. The amount of compensation he received during this period is not entirely clear from the record. Therefore, the case shall be remanded to OWCP to calculate the actual amount of the overpayment created by the forfeiture for this specific period.³⁰

Appellant's failure to accurately report his earnings and employment activities on the Form EN1032 similarly constitutes a failure to provide information which he knew or should have known to be material.³¹ Consequently, OWCP properly found him at fault in creating the

²⁷ See *J.A.*, Docket No. 14-1863 (issued July 7, 2015) for a case where the Board found the claimant omitted earnings/employment activity on a Form EN1032. The Board emphasized the explicit language of the Form EN1032 and the claimant's signing of a certification clause advising him of the materiality of his failure to report his employment.

²⁸ See *C.R.*, Docket No. 08-2425 (issued August 3, 2009).

²⁹ *Id.*

³⁰ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case.

³¹ 20 C.F.R. § 10.433(a)(2).

overpayment. Because appellant was at fault, he is not eligible for a waiver of recovery of the overpayment.³²

CONCLUSION

The Board finds that appellant forfeited his right to wage-loss compensation for the period May 13 through December 24, 2014, thus resulting in an overpayment of compensation. However, the exact amount of the overpayment for the period May 13 to December 24, 2014 is yet to be determined. The Board further finds that appellant was at fault in creating this overpayment, thereby precluding waiver of recovery. The Board further finds that OWCP's finding of forfeiture and resulting overpayment for the period December 25, 2014 to March 15, 2015 is set aside.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further action consistent with this decision.

Issued: June 28, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

³² Gary L. Allen, 47 ECAB 409, 418 (1996).